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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SUMMIT CANYON RESOURCES,
LLC,

Plaintiff,

v.

MERLE LOCANAS, *et al.*,

Defendants.

Case No. 2:15-cv-00409-LDG (PAL)

ORDER

The plaintiff–Summit Canyon Resources, LLC–brought this action in state court seeking quiet title to property it purchased at a non-judicial foreclosure sale on a homeowners association lien. As defendants, Summit Canyon named Merle Locanas (the individual who originally purchased the property and obtained loans secured by First and Second Deeds of Trust on the property); (2) Green Tree Servicing, LLC (Green Tree), to which the First Deed of Trust was assigned at the time of the non-judicial foreclosure sale; and Nationstar Mortgage, LLC, to which the Second Deed of Trust was assigned at the time of the foreclosure sale.

1 Green Tree removed this action to this Court, alleging that “[n]o properly joined
2 Defendant is a citizen of Nevada,” and that the amount in controversy exceeded \$75,000.
3 Summit Canyon did not move to remand this matter.

4 Following Green Tree’s filing of a counterclaim against Summit Canyon and a third-
5 party claim against Giavanna Homeowners Association (Giavanna), and Giavanna’s filing
6 of a third-party claim against Absolute Collection Services (Absolute), LLC, Summit Canyon
7 moved to amend its complaint to add direct claims against Giavanna and Absolute. Green
8 Tree opposed the motion, arguing in part that the proposed Amended Complaint violated
9 Local Rule 8.1 as the first allegation of the complaint did not state the basis for federal
10 jurisdiction. In reply, Summit Canyon conceded it had not complied with LR 8.1 because it
11 “does not believe the Federal Court has jurisdiction over this case” Summit Canyon
12 did not, however, provide any argument supporting its assertion that this Court lacked
13 jurisdiction of this case.

14 Pursuant to Fed. R. Civ. Pro 12(h)(3), the court may, at any time, determine and
15 dismiss an action if it lacks subject matter jurisdiction. The Court previously noted its
16 concern whether the Court had diversity jurisdiction over Summit Canyon’s quiet title claim,
17 and requested that the parties submit additional briefing on the issue. Of primary concern
18 was that, while Summit Canyon had asserted a belief that the Court lacks diversity
19 jurisdiction, it had never provided an argument in support of that belief. Indeed, Green
20 Tree asserted that no properly joined defendant was a citizen of Nevada, had
21 acknowledged that Locanas had been named as a defendant, but argued that the
22 citizenship of Locanas was immaterial because Locanas “claims no interest in the property
23 that is the subject of this quiet title action.” Nevertheless, Summit Canyon did not seek to
24 remand this action on the basis that the Court lacked diversity jurisdiction because Locanas
25 was a citizen of Nevada who was properly joined and had been properly served. In
26 response to the Court’s request for additional briefing, Summit Canyon argued that

1 Locanas could assert a claim against the property, but cited no legal basis upon which
2 Locanas could assert such a claim.

3 Following the briefing, but before this Court addressed the parties' memoranda
4 regarding diversity jurisdiction, the Ninth Circuit issued an opinion in *Weeping Hollow*
5 *Avenue Trust v. Spencer*, 831 F.3d 1110 (2016). Summit Canyon did not bring this
6 decision to the attention of this Court until more than a month after this Court's
7 determination that Locanas was fraudulently joined. In *Weeping Hollow*, the Ninth Circuit
8 recognized that, "under Nevada law, [the former property owner] could have brought claims
9 challenging the HOA foreclosure sale within five years of the sale." *Id.*, at 1114. As noted
10 by the Ninth Circuit, even though the former property owner lacked a statutory right of
11 redemption, the former owner could still seek to quiet title "by invoking the court's inherent
12 equitable jurisdiction to settle the disputes." Following this Court's decision, Summit
13 Canyon sought reconsideration of the decision based solely on *Weeping Hollow*.

14 In response, Green Tree argues that *Weeping Hollow* is inapposite because it "does
15 not address whether jurisdiction exists following default of the only non-diverse
16 defendant" The issue before the Court, however, is whether this Court had diversity
17 jurisdiction at the time Green Tree removed the action to this Court. Green Tree has not
18 offered any argument that, in light of *Weeping Hollow*, Summit Canyon did not have a
19 viable claim for quiet title against Locanas *at the time Green Tree removed* this action to
20 this Court.

21 Although Summit Canyon never properly sought remand of this action, and despite
22 the Court's efforts to have Summit Canyon identify legal authority establishing that it had a
23 viable claim for quiet title against Locanas, Summit Canyon did not do so until its motion for
24 reconsideration. Nevertheless, pursuant to Fed. R. Civ. Pro 12(h)(3), the court may, at any
25 time, determine and dismiss an action if it lacks subject matter jurisdiction. Further, for an
26 action removed from state court, this Court must dismiss this action when it is established

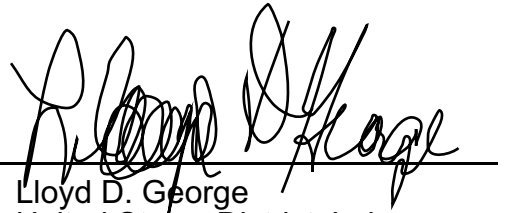
1 that the Court lacked diversity jurisdiction at the time of removal. In light of *Weeping*
2 *Hollow*, Green Tree has not met its heavy burden of showing that Summit Canyon did not
3 have a viable claim against Locanas at the time it removed this action. Accordingly, the
4 Court must remand this matter as it lacks diversity jurisdiction over Summit Canyon's suit.

5 Accordingly,

6 THE COURT **ORDERS** that Summit Canyon's Motion for Reconsideration (ECF No.
7 102) is GRANTED;

8 THE COURT FURTHER **ORDERS** that this matter is REMANDED; The Clerk of the
9 Court is instructed to take all necessary steps to promptly remand this matter to the court
10 from which it was improperly removed.

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13 DATED this 21 day of September, 2017.

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16 Lloyd D. George
United States District Judge
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